

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

NORM W. CURTIS,	)	
	)	
Claimant,	)	<b>IC 02-511354</b>
	)	<b>IC 04-505885</b>
v.	)	
	)	
MICHAEL RICE dba	)	
PERFORMANCE ASSOCIATES,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>AND RECOMMENDATION</b>
Employer,	)	
and	)	
	)	
IDAHO STATE INSURANCE FUND,	)	<b>FILED FEB 28 2006</b>
	)	
Surety,	)	
Defendants.	)	
_____	)	

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Coeur d'Alene on September 7, 2005. James F. Combo represented Claimant. Paul J. Augustine represented Defendants. The parties presented oral and documentary evidence. They took post-hearing depositions and submitted briefs. The case came under advisement on December 30, 2005. It is now ready for decision.

**ISSUES**

After due notice to the parties, the issues to be resolved are as follows:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident; and
2. Whether and to what extent Claimant is entitled to medical care.

**CONTENTIONS OF THE PARTIES**

Claimant suffered two compensable accidents.

Claimant contends he is entitled to a surgical fusion of L5-S1.

Defendants contend a surgical fusion would constitute unreasonable medical care. Also, even if reasonable, the need for fusion arises from a degenerative condition and is not related to either accident.

### **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant;
2. Claimant's Exhibits 1 – 7, including an Exhibit 4B;
3. Defendants' Exhibits A – B;
4. Post-hearing depositions of neurosurgeons Jeffrey J. Larson, M.D., and Ronald L. Vincent, M.D. (with its exhibits).

In the deposition of Mr. Larson, the Referee was invited to visit Dr. Larson's web page for additional information. Such information is not a part of this record, nor subject to cross-examination, nor viewed nor considered by the Referee. After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

### **FINDINGS OF FACT**

1. Claimant worked for Employer repairing and reconditioning automobile cylinder heads. This heavy work required repeated lifting of each cylinder head. On two occasions, June 3, 2002 and March 4, 2004, Claimant experienced a sudden onset of pain while lifting a cylinder head.

2. James N. Anderson, D.C., treated Claimant from August to November 1998 for a lumbar sprain/strain involving L2-5 which arose in May 1998. Claimant was released after improvement and did not return to Dr. Anderson. Claimant noted by history a 1971 fall of 55 feet onto his back and head.

3. On June 3, 2002, Claimant visited Tom E. Nickol, M.D., at Kootenai Medical

Center Emergency Room (“KMC ER”) following the onset of left low back pain which arose when lifting a cylinder head at work. Dr. Nickol diagnosed an acute left low back strain.

4. On June 12, 2002, a lumbar X-ray was reported to be normal.

5. On June 21, 2002, a lumbar MRI showed mild anterior spondylitic spurring at L2-3 with mild loss of disc height and a bulging annulus as well as mild L5-S1 loss of disc hydration and a small focal central disc protrusion.

6. On July 3, 2002, Claimant visited Dr. Nickol at KMC ER for what was diagnosed as a resolved low back strain and radicular symptoms. Dr. Nickol noted Claimant’s improvement following physical therapy. On examination, Claimant showed full range of motion with normal strength reflexes and straight leg raising.

7. There are no related medical records in evidence between July 3, 2002 and March 4, 2004.

8. On March 4, 2004, Claimant felt pain while lifting a cylinder head at work. He visited Mark E. Manteuffel, M.D., at KMC ER for what was diagnosed an acute lumbosacral back strain. Dr. Manteuffel recorded by history “one previous low back strain, which took about six weeks to heal, several years ago. No problem since then. . . . He had a full recovery.” On examination, Claimant showed low back tenderness throughout the lumbosacral paraspinous musculature without abnormalities in strength or reflexes. Two months later, Claimant reviewed his medical record and requested Dr. Manteuffel revise the record to indicate “the back injury which occurred in the past had never completely healed.” Claimant reported “he has had some numbness in his left thigh region as well. He has not had any weakness in the leg, nor any bowel or bladder dysfunction.”

9. On March 6, 2004, Claimant visited Michael L. Ettner, M.D., at KMC ER for right sciatica/low back injury. He reported low back pain radiating into his right buttock and

leg with numbness in his left buttock and a feeling of rectal fullness. Examination elicited brisk and symmetrical reflexes, negative straight leg raise and no weakness.

10. On March 13, 2004, Claimant visited Anthony L. Russo, M.D., at KMC ER for lumbar radiculopathy. He complained of lumbosacral spine pain into his left buttock with left thigh numbness. He described the pain migrating halfway down his calf. On examination, Claimant limped, showed a positive straight leg raise, an absent left Achilles reflex, and a slight weakness of the left tibialis anterior.

11. On March 20, 2004, a lumbar MRI showed mild disc bulges at L2-3, L4-5, and L5-S1. The L5-S1 disc was desiccated and mild facet degenerative sclerosis was evident at the L4-5 and L5-S1 levels. The radiologist compared it to the June 2002 MRI and reported, "No significant interval change."

12. On March 23, 2004, Glenn L. Keiper, M.D., examined Claimant and found normal strength and reflexes. He diagnosed "L5-S1 degenerative disc disease, exacerbated by work related activity." Claimant told Dr. Keiper he had continuing pain since his 2002 accident. Dr. Keiper, in nearly all follow-up visits, recorded his opinion that Claimant's degenerative disc disease was work related.

13. On April 22, 2004, Scott Magnuson, M.D., examined Claimant. He found full range of motion with no muscular weakness or atrophy, normal reflexes and a negative straight leg raising test. Claimant reported decreased sensation to light touch in his lateral and dorsal left foot. Dr. Magnuson diagnosed degenerative disc disease and performed a lumbar epidural steroid injection for symptom relief.

14. On June 1, 2004, Dr. Magnuson performed a second injection. Claimant testified he obtained only mild, short-term pain reduction from these injections.

15. On June 25, 2004, X-rays of Claimant's lumbosacral spine in flexion and

#### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4**

extension showed small marginal osteophytes at L3 and L5 without compression deformities or instability. The report noted Claimant's range of flexion and extension was abnormally small.

16. On August 13, 2004, Ronald Vincent, M.D., evaluated Claimant and the medical records at Surety's request. On examination, he noted Claimant limped; Claimant reported pain with 20 degrees of flexion, and showed normal muscle strength and symmetrical reflexes; the left straight leg raising test was minimally positive; Claimant also reported diminished sensation at his left foot. Dr. Vincent diagnosed preexisting degenerative disc and joint disease at L5-S1 with lumbar spondylosis associated with an aggravation of a prior injury of June 3, 2002; a March 4, 2004 aggravation of this preexisting condition; and some symptom magnification with essentially no objective findings to support Claimant's subjective complaints. He opined Claimant remained stable from the 2002 injury without spondylolisthesis or instability within the spinal column or paravertebral muscle spasm. He opined Claimant required no restrictions. He opined no treatment other than anti-inflammatory medication and physical conditioning would be helpful. He opined Claimant suffered no permanent impairment. On July 28, 2005, Dr. Vincent clarified his opinion by stating the June 3, 2002 injury was not a basis for surgery either. He elaborated that degenerative disc and joint disease occurs naturally and is related to aging, deconditioning, and "other factors of everyday life," and not related to nor aggravated by either accident. On January 10, 2005, he opined that surgery would be related to the preexisting condition without relationship to the lumbar strain of March 2004.

17. On September 27, 2004, Dr. Keiper first suggested the possibility of surgery.

18. On October 7, 2004, Dr. Magnuson performed a discogram and diagnosed lumbar disc degeneration and lumbosacral neuritis. Claimant reported concordant low back pain but no leg pain at L5-S1 and nonconcordant pain at L4-5. The dye did not leak out of the discs.

19. On November 15, 2004, Dr. Keiper responded to a Surety inquiry by indicating

he did not agree with the IME findings. He stated simply, “will look forward to deposition.”

20. On November 16, 2004, repeat X-rays of Claimant’s lumbar spine in flexion and extension showed mild retrolisthesis of L5 on S1 with mild facet arthropathy but no instability.

21. On December 29, 2004, Jeffrey J. Larson, M.D., first saw Claimant. On examination, Dr. Larson reported limited range of motion and a positive straight leg raising test. After this first visit, Dr. Larson recommended a lumbar fusion. Dr. Larson examined Claimant on three occasions.

22. On April 19, 2005, Dr. Larson wrote Claimant’s attorney to support Claimant’s request for an expedited hearing.

23. On August 19, 2005, Dr. Larson opined Claimant’s back condition was pre-existing related to the June 2002 accident but was symptomatically aggravated in the March 2004 accident.

24. In deposition, Dr. Larson opined Claimant was not a candidate for disc replacement surgery because his facet joints are hypertrophic. Dr. Larson is confident a spinal fusion at L5-S1 would relieve Claimant’s pain which results from his degenerative disc disease. He opined that instability is not a prerequisite for a spinal fusion. Dr. Larson disagrees with Dr. Vincent’s opinion that Claimant showed symptom magnification. Dr. Larson opined that Claimant’s age of 47 precludes the normal aging process as a cause of his degenerative disc disease because 47 year-olds do not “routinely” get this problem. Dr. Larson opined Claimant’s 2002 and 2004 work accidents combined to cause Claimant’s current back condition.

25. In deposition, Dr. Vincent opined that Claimant showed signs of symptom magnification on examination. He opined Claimant’s back showed no instability. He opined the degenerative changes demonstrated by MRI are too mild to warrant surgery. Moreover,

they are unsupported by objective findings on examination. He opined conservative care was a prerequisite to fusion surgery and Dr. Larson has not provided conservative care. He opined Claimant does not require further medical care related to the 2002 and 2004 accidents, although the underlying degenerative problem may flare up from time to time. He opined Claimant's degenerative disc condition resulted from his everyday life and age. He has seen degenerative disc disease in patients as young as 20 years old.

### **DISCUSSION AND FURTHER FINDINGS OF FACT**

26. **Causation.** A claimant must prove he was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995). A preexisting disease or infirmity does not disqualify a workers' compensation claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. An employer takes the employee as it finds him. Wynn v. J.R. Simplot Co., 105 Idaho 102, 666 P.2d 629 (1983).

27. Here, the deposed experts agree Claimant suffers from degenerative disc disease without spinal instability. Both are competent neurosurgeons with a reasonable difference of professional opinion about whether and to what extent the 2002 and/or 2004 accidents caused Claimant's current back condition. Dr. Vincent's opinions receive greater weight. He more clearly explained the reasons for his opinions. Moreover, Dr. Vincent has much greater experience as a neurosurgeon than Dr. Larson. Dr. Vincent's deposition testimony about

Claimant's subjective mild over-reporting of pain was consistent with Claimant's hearing testimony. Dr. Larson's unequivocal denial that such exaggeration was present was inconsistent with Claimant's hearing testimony.

28. The 2004 MRI is unchanged from the 2002 MRI. Neither shows disc impact on the spinal cord or nerve roots. Both show a degenerative condition at L2-3 as well as L5-S1. The lack of change between the two MRIs undercuts any claim that the 2004 accident caused any permanent injury. Therefore, the original 2004 diagnosis of lumbar strain is persuasive. The 2004 accident caused a temporary injury superimposed on an underlying preexisting condition. The temporary injury has stabilized.

29. Claimant attempted to enhance his medical records and provide testimony to support constant, continuing pain since the 2002 accident. In fact, Claimant returned to work after his 2002 strain resolved and did not seek additional medical care until after the 2004 strain arose. The Referee does not doubt Claimant experienced mild intermittent back pain with activity during the intervening period, but Claimant's attempt to describe it as constant was a mild exaggeration. Moreover, that description was consistent with the mild symptom magnification reported by Dr. Vincent. The 2002 accident caused a temporary injury, a lumbosacral strain, which stabilized after a few weeks.

30. The record does not explain why some people suffer from degenerative disc disease at an earlier age than others. But variation occurs. Dr. Larson's unequivocal opinion that 47 is too young is not credible. Claimant suffers from a degenerative back condition which may generally be linked to his age, heavy work, and active lifestyle, but was not caused by either of the two accidents for which claims were filed. For Claimant, increased activity increases the risk of pain and its severity. If Claimant continues to overwork his bad back, he may suffer additional symptoms at work and elsewhere.

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 8**



31. Claimant showed he suffered a lumbar sprain or strain on June 3, 2002. He recovered from that injury by July 3, 2002. Similarly, Claimant recovered from his March 4, 2004 work injury by the time Dr. Vincent evaluated him on August 13, 2004.

32. **Medical care.** Idaho Code § 72-432 requires an employer to provide reasonable care for a reasonable time. It is for the physician, not the Commission, to decide whether the treatment was required. The only review the Commission is entitled to make of the physician's decision is whether the treatment was reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). Claimant's medical treatment to the date of hearing was reasonable, including that care provided after August 13, 2004.

33. The foregoing causation findings render moot any question of whether fusion surgery would be reasonable. The degenerative disc disease for which Dr. Larson proposes the fusion surgery is not the result of either the 2002 or 2004 accidents.

### **CONCLUSIONS OF LAW**

1. Claimant suffered compensable temporary strain or sprain injuries to his low back on June 3, 2002 and March 4, 2004, both of which have resolved to reasonable medical stability;

2. Claimant's underlying degenerative disc disease was not caused nor permanently exacerbated by the compensable injuries and the requested surgical fusion is not compensable; and

3. Claimant is entitled to benefits for medical care provided to the date of hearing.

## RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this 2<sup>ND</sup> day of February, 2006.

INDUSTRIAL COMMISSION

/S/\_\_\_\_\_  
Douglas A. Donohue, Referee

ATTEST:

/S/\_\_\_\_\_  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 28<sup>TH</sup> day of FEBRUARY, 2006, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

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/S/\_\_\_\_\_